

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Public Safety and Homeland Security
Bureau Seeks Comment on Petitions
for Waiver to Deploy 700 MHz
Public Safety Broadband Networks

PS Docket No. 06-229

Comments

The State of New York ("the State") hereby submits comments in response to the Federal Communications Commission's ("the Commission") Public Notice dated September 15, 2010.

1. Eligibility

After the events which occurred on September 11, 2001, it became apparent just how essential interoperable public safety communications is to first responders. Unfortunately, not much progress has been made during the last 9 years towards implementing wide area, nationally interoperable public safety networks. Public safety needs to move to the next generation in communications capabilities, and the 700 MHz Spectrum provides the means to do so.

In FCC Order 10-79 ("Waiver Order"), the FCC limited network users to those entities whose sole or principal purpose is to protect the safety of life, health, or property and who meet the remaining requirements of Section 337(f) of the Communications Act (See 47 U.S.C § 337). Therefore, the State supports the granting of waivers only to entities who meet the aforementioned requirements.

In the event that an entity whose eligibility is not readily apparent applies for a waiver, it is the State's position that the waiver applicant should bear the burden of convincingly proving that they meet the requirements set forth in the Waiver Order. If the waiver applicant is unable to meet this burden their request should be denied.

Overlapping Requests

The Waiver Order acknowledges that States offer a reasonable delineation, both geographically and politically, to ensure that deployments are undertaken with sufficient authority, planning and coordination among all state and local public safety agencies within the state. For these same reasons, the State's position is that if a State has been granted a waiver all jurisdictions within that State should go to the State for use of the Spectrum as opposed to seeking their own waiver. In the event that a jurisdiction within a waiver recipient State seeks their own waiver, the FCC should only grant the requested waiver if there is consent on the part of the State, and coordination among the State and the requesting jurisdiction. This is the same mechanism that was used by the FCC when determining whether or not to grant a waiver to both the State of New York and New York City. The FCC should use this same mechanism to resolve similar conflicts with respect to any additional waiver requests.

2. Timing Bureau action and the volume of waivers received

It is essential to provide secure, state-of-the-art, interoperable communication capabilities to the public safety agencies. The conditions outlined in the Waiver Order granting waiver Petitions filed by public safety entities for early deployment of statewide or local public safety broadband networks in 700 MHz public safety broadband spectrum (763-768 MHz and 793-798MHz), provide a fair and rational basis for advancing additional waiver Petitions seeking early deployment of statewide or local public safety broadband networks.

The State recommends that these requirements be followed as prerequisites to approval for additional waivers.

3. Impact of additional waivers of the budget of the Public Safety Spectrum Trust (PSST)

The State supports the PSST's current method for budget development. It is the State's position that the cost of the administration of the Spectrum Leases by the PSST should be equally distributed amongst all waiver recipients. In the event that the FCC grants additional waivers to entities beyond the 21 original waiver recipients, the administration fees established for the original waivers recipients should be reduced accordingly. Any funds received in excess of the newly established fee should be refunded to the appropriate waiver entities.

Respectfully Submitted,



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